

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

MARVIN SMIRMAN

Plaintiff

04 CV 05661

*Q*  
Judge Hellerstein

COMPLAINT  
PLAINTIFF DEMANDS  
TRIAL BY JURY

THE CITY OF NEW YORK, DETECTIVE JOSEPH  
CORNETTA, Shield # 02518 & BARBRA WEITMAN

Defendants

AS AND FOR A FIRST CAUSE OF ACTION ON BEHALF OF THE PLAINTIFF  
AGAINST THE CITY OF NEW YORK

1. This is a civil action for damages brought pursuant to redress the deprivation by defendants of the rights secured to plaintiff under the Constitution and laws of the United States and State of New York. The defendants, without a warrant and without probable cause, arrested and falsely imprisoned the plaintiff. The plaintiff also invokes the pendant jurisdiction of this Court to consider various state law claims

2. That the jurisdiction of this Court is invoked under the provisions of Section 1331 & 1383 of Title 28 and Sections 1983 & 1988 of Title 42 of the United States Code . Plaintiff further invokes the pendant jurisdiction of this Court to consider claims arising under state law. The amount in controversy exceeds \$75,000.00 excluding costs and attorney's fees.

3. Upon information and belief the defendant THE CITY OF NEW YORK was and is a municipal corporation organized and existing under the laws of the City and State of New York.

4. That the defendant DETECTIVE JOSEPH CORNETTA was and is an agent, servant and employee of the defendant THE CITY OF NEW YORK .

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5. That at all times hereinafter mentioned, the defendant BARBARA WEITMAN was and still is a resident of the County City & State of New York.

6. That on or about the 19th day of February, 2004 the plaintiff was present at or near 16 West 33rd Street, County , City & State of New York.

7. That while at the aforesaid time and place the plaintiff was unlawfully and without just cause, approached, accosted, arrested, prosecuted & falsely imprisoned by the aforementioned officers of THE NEW YORK CITY POLICE DEPARTMENT who were agents, servants and employees of the defendant THE CITY OF NEW YORK who were acting under color of law during the aforesaid transactions.

8. That the criminal action brought against the plaintiff was eventually dismissed by a judge of the Criminal Court of the City & County of New York.

9. In the manner as aforesaid, each of the defendants, jointly & severally, acted maliciously, willfully and wantonly, and outside the scope of his jurisdiction, although under color of law, and violated the following rights of the plaintiff; to be free from unreasonable search & seizure, from warrantless search & seizure, from use of excessive force, assault & battery, summary punishment without trial & due process of law.

10. Defendants, its agents servants and employees, by their conduct herein alleged, intentionally, willfully and without justification, and under color of law did deprive the plaintiff of his rights, privileges and immunities secured to him by the Constitution and the laws of the United States, and by 42 U.S.C. Sections 1983 & 1988 and by the statutes and laws of the state of New York which are invoked under the pendant jurisdiction of this Court.

11. That by reason of the foregoing the plaintiff has suffered damage & injury in the sum of ONE MILLION DOLLARS.

AS AND FOR A SECOND CAUSE OF ACTION ON BEHALF OF THE PLAINTIFF  
AS AGAINST BARBARA WEITMAN

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12. Plaintiff repeats, realleges and reiterates each and every allegation of the complaint in the paragraphs numbered "1" through "10" with the same force and effect as if more fully set forth at length herein.

13. That the plaintiff was falsely arrested & imprisoned upon the false complaint & at the insistence and false testimony of the defendant BARBARA WEITMAN .

14. That by reason of the foregoing the plaintiff has suffered damage & injury in the sum of ONE MILLION DOLLARS.

AS AND FOR A THIRD CAUSE OF ACTION ON BEHALF OF THE PLAINTIFF  
AS AGAINST DEFENDANT BARBARA WEITMAN

15. Plaintiff repeats, realleges and reiterates each and every allegation of the complaint in the paragraphs numbered "1" through "14" with the same force and effect as if more fully set forth at length herein.

16. That the plaintiff was maliciously prosecuted upon the false complaint & at the insistence and false testimony of the defendant BARBARA WEITMAN .

17. That defendant BARBARA WEITMAN continued with the prosecution of the criminal action against the plaintiff ,& caused others to do so, even though she knew the criminal action was false & baseless .

18. That the criminal action against the plaintiff was eventually dismissed by a Judge of the Criminal court of the City & County of New York .

19. That by reason of the foregoing the plaintiff has suffered damage & injury in the sum of ONE MILLION DOLLARS.



AS AND FOR A FOURTH CAUSE OF ACTION ON BEHALF OF THE PLAINTIFF  
AS AGAINST DEFENDANT BARBARA WEITMAN

20. Plaintiff repeats, realleges and reiterates each and every allegation of the complaint in the paragraphs numbered "1" through "18" with the same force and effect as if more fully set forth at length herein.

21. That the defendant BARBARA WEITMAN swore out a false & perjurious complaint & caused criminal process to issue as against the plaintiff and caused the New York City Police Department & New York County District Attorney to falsely arrest, imprison & prosecute the plaintiff for Aggravated Harassment in the Second Degree & other crimes .

22. That the aforementioned actions of the defendant BARBARA WEITMAN had no lawful or factual basis but were committed solely to harass and wrongfully punish the plaintiff & to gain advantage in a custody dispute involving their minor child.

23. That by reason of the foregoing plaintiff was maliciously prosecuted & imprisoned upon the false complaint & at the insistence and false testimony of the defendant BARBARA WEITMAN, deprived of his freedom, and forced to spend money for legal fees .

24. That the criminal action against the plaintiff was eventually dismissed by a Judge of the Criminal court of the City & County of New York .

25. That by reason of the foregoing the defendant BARBARA WEITMAN has abused the process of the Criminal Court of the City & County of New York .

26. That by reason of the foregoing the plaintiff has suffered damage & injury in the sum of ONE MILLION DOLLARS.

AS AND FOR A FIFTH CAUSE OF ACTION ON BEHALF OF THE PLAINTIFF  
AS AGAINST DEFENDANT BARBARA WEITMAN

27. Plaintiff repeats, realleges and reiterates each and every allegation of the complaint in the paragraphs numbered "1" through "25" with the same force and effect as if more fully set forth at length herein.

28. That the aforementioned actions by the defendant BARBARA WEITMAN including the false arrest, false imprisonment, malicious prosecution & abuse of process as against the plaintiff caused the plaintiff extreme mental & emotional distress .

29. By reason of the foregoing the defendant BARBARA WEITMENT has committed the tort of the intentional infliction of mental & emotional distress .

30. That by reason of the foregoing the plaintiff has suffered damage & injury in the sum of ONE MILLION DOLLARS.

AS AND FOR A SIXTH CAUSE OF ACTION ON BEHALF OF THE PLAINTIFF  
AS AGAINST DEFENDANT BARBARA WEITMAN

31. Plaintiff repeats, realleges and reiterates each and every allegation of the complaint in the paragraphs numbered "1" through "28" with the same force and effect as if more fully set forth at length herein.

32. That the actions of the defendant BARBARA WEITMAN were outrageous, wanton, malicious, reckless & vicious.

33. That by reason of the foregoing the plaintiff is entitled to punitive damages in the sum of ONE MILLION DOLLARS.

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WHEREFORE, the plaintiff respectfully preys to the court for judgment upon each cause of action as follows:

- a. Compensatory damages in an amount which this Court shall consider to be just and fair;
- b. Punitive and exemplary damages in an amount which this Court shall consider to be just & fair;
- c. Attorney's fees in an amount which this Court shall consider just & fair;
- d. Together with the costs and disbursements of this action and such other and further relief which this Court may seem just & proper.

DATED: BROOKLYN, NY  
July 19, 2004.

A handwritten signature in black ink, appearing to read 'Michael Colihan', is written over a horizontal dashed line.

MICHAEL COLIHAN(MC-0826)  
Attorney for the Plaintiff  
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